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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

ORACLE AMERICA, INC., a Delaware
corporation;

Plaintiff,
v.

SERVICE KEY, LLC, a Georgia limited liability
company; ANGELA VINES; DLT FEDERAL
BUSINESS SYSTEMS CORPORATION, a
Delaware corporation; and DOES 1–50,
Defendants.

No. 4:12-cv-00790-SBA

**SECOND AMENDED COMPLAINT FOR
DAMAGES AND INJUNCTIVE RELIEF
FOR:**

- (1) COPYRIGHT INFRINGEMENT;
- (2) VIOLATIONS OF THE COMPUTER
FRAUD AND ABUSE ACT;
- (3) FALSE ADVERTISING IN VIOLATION
OF THE LANHAM ACT SECTION 43(A);
- (4) BREACH OF CONTRACT;
- (5) INDUCING BREACH OF CONTRACT;
- (6) FRAUDULENT INDUCEMENT
(AGAINST SERVICE KEY);
- (7) FRAUDULENT INDUCEMENT
(AGAINST DLT-FBS)
- (8) UNFAIR COMPETITION;
- (9) INTENTIONAL INTERFERENCE WITH
PROSPECTIVE ECONOMIC RELATIONS;
- AND
- (10) AN ACCOUNTING

Case No. 4:12-cv-00790-SBA

SECOND AMENDED COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

Filed Under Seal

1 Plaintiff Oracle America, Inc. (“Oracle” or “Plaintiff”) for its Complaint against
2 Defendants Service Key LLC (“Service Key”), Angela Vines (“Vines”), and DLT Federal
3 Business Systems Corporation (“DLT-FBS”) (together “Defendants”) alleges as follows based
4 on its personal knowledge as for itself, and on information and belief as to the acts of others:

5 **I. INTRODUCTION**

6 1. Defendants are engaged in a scheme to steal and distribute copyrighted,
7 proprietary Oracle software code, along with the login credentials necessary to download this
8 code from Oracle’s password-protected websites. Through false pretenses as purported Oracle
9 customers or partners, Defendants have taken vast quantities of software patches and updates for
10 Oracle’s proprietary Sun Solaris operating system, and other technical support files used on
11 Oracle’s Sun computers. Defendants falsely have told unwitting third parties that they have
12 authority to provide Oracle’s highly prized and proprietary intellectual property despite, in fact,
13 having no such authorization or permission from Oracle to do so. Oracle brings this lawsuit to
14 stop this illegal activity.

15 2. Oracle is the world’s leading supplier of enterprise hardware and software
16 systems, and related technical support and consulting services for those systems. Customers who
17 own Oracle hardware have the option to purchase an annual contract for technical support
18 services provided by Oracle for those hardware systems. As part of those support services,
19 customers receive software patches and updates for the proprietary firmware and operating
20 system software that ships with and runs the hardware systems.

21 3. In most instances, Oracle delivers its technical support services for this
22 software and firmware over the internet. Customers that purchase a technical support agreement
23 from Oracle receive a “Customer Support Identification” number (“CSI number”) linked to the
24 products covered by the support contract. The CSI number allows customers to create login
25 credentials to access Oracle’s secure support website. Using those credentials, the licensed
26 customer on active support may download critical software patches and updates needed to
27 maintain the functioning of the customer’s hardware systems. The customer may not share or use
28 its access credentials for the benefit of others—only customers who pay for and maintain a

1 technical support agreement with Oracle may download Oracle's proprietary software patches
2 and updates, and only for their own internal business use on licensed computers.

3 4. Defendants Service Key and DLT-FBS purport to offer support services
4 related to Oracle's Sun-branded hardware systems. If a customer chooses not to purchase
5 technical support services from Oracle for Oracle hardware, it may elect to engage a third party
6 such as DLT-FBS to provide those services, or it can choose to use no support services at all. If a
7 customer hires a third party—instead of Oracle—to provide support services on an Oracle
8 hardware system, that third party cannot access or use Oracle's support website (or provide
9 access to Oracle's support website to others). In addition the customer may not access or use
10 official, Oracle-authored updates, patches, or fixes to provide support services for the Oracle
11 software running the hardware unless the customer lawfully obtained those patches while still on
12 a paid Oracle support contract because those updates, patches, and fixes are Oracle's proprietary
13 intellectual property. Defendants, as third party support providers, have no rights to use Oracle's
14 proprietary software as part of their support service offerings. They also cannot provide
15 customers with unauthorized login credentials to Oracle's secure support websites, or wrongfully
16 download Oracle's support materials themselves for illegal sale to or use by their customers.

17 5. Defendants ignored these rules as part of a gray market scheme to sell
18 support on Oracle hardware to customers with no active support contract with Oracle that would
19 permit the customers to access or use Oracle's support website including the proprietary
20 intellectual property available on the website. Neither the Defendants nor the customers that
21 contracted with them directly had any right to access and/or download software patches or
22 updates from Oracle for these illicit purposes, but Defendants falsely told their customers that
23 Defendants could provide that access and support. To provide their services, Defendants
24 obtained access credentials to Oracle's secure support website under false pretenses, then
25 trafficked in those credentials and downloaded Oracle's intellectual property in violation of the
26 agreements by which they obtained the credentials in the first place.

27 6. Defendants also falsely tell their customers that they can use access
28 credentials provided by Defendants, which Defendants obtained under false pretenses from

Oracle, to download Oracle software for their own use. For example, on at least one occasion when one of DLT-FBS's customers requested support from DLT-FBS for an issue that customer was having related to Oracle's software, DLT-FBS arranged for access credentials belonging to Service Key to be sent to that customer so it could access Oracle's secure support website directly and download Oracle's software, even though that customer was not authorized by Oracle to do so. Oracle believes that this misuse of Service Key's login credentials has occurred through DLT-FBS and other similar third party support providers on many other occasions.

7. Neither Service Key nor DLT-FBS has permission from Oracle to distribute copies of Oracle's copyrighted software to any other customer. Neither Service Key nor DLT-FBS has permission from Oracle to provide their access credentials to anyone else, including for use by third parties to access Oracle's customer support websites or to download Oracle's copyrighted software. Defendants' activities infringe Oracle's intellectual property rights, violate the laws governing website and computer access, breach certain agreements with Oracle, including the Oracle website Terms of Use, and generally undermine Oracle's business model. Oracle brings this lawsuit to stop Defendants' wrongful conduct.

II. THE PARTIES

8. Plaintiff Oracle is a Delaware corporation duly authorized to do business in the State of California, with its principal place of business in Redwood City, California. Oracle develops and licenses certain intellectual property, including copyrighted software programs, and provides related support and consulting services to its licensed customers. The entity known as Oracle USA, Inc. was merged into Sun Microsystems, Inc. ("Sun")¹, which then changed its name to Oracle America. Accordingly, Plaintiff Oracle continues to hold all of Sun's interest, rights, and title to the copyrights at issue in this action and the rights to bring claims for infringement of those copyrights.

¹ Sun developed and sold computer hardware and the Solaris operating system which runs that hardware. Sun computers, which Oracle continues to sell under the Sun brand name, may be referred to as Oracle or Sun computer hardware interchangeably throughout this Complaint.

1 9. Service Key is a Georgia limited liability company with its principal place
2 of business in Norcross, Georgia. Service Key has purchased and owns a small number of
3 Oracle/Sun computers, and has also purchased annual contracts for technical support services
4 from Oracle for certain of those computers, which are expressly limited for Service Key's own
5 internal use. Service Key has been issued at least three CSI Numbers associated with the support
6 contracts that it has maintained and has login credentials to Oracle's secure technical support
7 website to obtain technical support services for the specifically covered Oracle hardware.

8 10. Upon information and belief, Vines is a resident of Georgia, and is
9 President and co-owner of Service Key.

10 11. DLT-FBS is a Delaware corporation with its principal place of business in
11 Chantilly, Virginia. Unlike Service Key, which purports to be an Oracle customer, DLT-FBS
12 was a member of the Oracle Partner Network ("OPN"), which it joined in February, 2011 when
13 it agreed to the terms of an Oracle Partner Network Agreement (the "OPN Agreement"). The
14 OPN is a membership program for third party companies primarily interested in reselling
15 Oracle's hardware and/or software products and related technical support services to be provided
16 by Oracle. OPN members receive access to training, education, tools, and support to develop
17 expertise in Oracle's products and solutions. Strictly to facilitate their function as resellers of
18 Oracle's products and services, OPN members also receive login credentials to access Oracle's
19 secure support website, but only for certain authorized uses. OPN members that acquire the right
20 to resell specific Oracle products to end-user customers must also enter into an additional
21 distribution agreement with Oracle allowing them to resell those products—the typical
22 agreement (and the one that DLT-FBS executed) is called a Full Use Distribution Agreement
23 ("FUDA").

24 12. DLT-FBS was issued at least one Oracle CSI number and access
25 credentials to Oracle's secure technical support website in connection with its status as an OPN
26 member. Oracle terminated DLT-FBS's membership in the OPN on November 7, 2011 due to
27 DLT-FBS's breach of the terms of the OPN Agreement. Certain of DLT-FBS's obligations to
28 Oracle under the OPN Agreement survived the termination of that agreement.

13. Oracle is currently unaware of the true names and capacities of Does 1 through 50, inclusive, whether individual, partnership, corporation, unincorporated association, or otherwise. Due to the surreptitious nature of Defendants' actions, and the complicated nature of their scheme, the identities of Does 1 through 50 have been concealed from Oracle, preventing Oracle from identifying them by name. After discovery, which is necessary to ascertain the true names and capacities of Does 1 through 50, Oracle will amend its complaint to allege the necessary identifying details.

14. Defendants Service Key and DLT-FBS have each agreed to personal jurisdiction and venue in this District in contracts with Oracle, which by this action Oracle alleges Service Key and DLT-FBS have breached.

15. Defendants Service Key, Vines, and DLT-FBS are also subject to personal jurisdiction in California because they each have committed wrongful intentional acts, expressly aimed at Oracle, who Defendants knew or should have known is a resident of California, and caused harm that they knew or should have known was likely to be suffered by Oracle in Redwood City, California.

16. At all material times, each of the Defendants, including Does 1 through 50, was the agent, servant, employee, partner, joint venturer, representative, subsidiary, parent, affiliate, alter ego, or co-conspirator of the others, had full knowledge of and gave substantial assistance to the alleged activities, and in so doing the things alleged, each was acting within the scope of such agency, service, employment, partnership, joint venture, representation, affiliation, or conspiracy, and each is legally responsible for the acts and omissions of the others.

III. JURISDICTION

17. Oracle's first cause of action arises under the Federal Copyright Act, 17 U.S.C. §§ 101 *et seq.*, its second cause of action arises under the Computer Fraud and Abuse Act, 18 U.S.C. §§ 1030 *et seq.*, and its third cause of action arises under the Lanham Act, 15 U.S.C. § 1125(a)(1)(B). Accordingly, this Court has subject matter jurisdiction over this action pursuant to 18 U.S.C. § 1030(g), 28 U.S.C. § 1331, and 28 U.S.C. § 1338.

18. This Court has supplemental subject matter jurisdiction over the pendant state law claims under 28 U.S.C. § 1367, because these claims are so related to Oracle's claims under federal law that they form part of the same case or controversy and derive from a common nucleus of operative facts.

IV. VENUE

19. Venue in this District is appropriate because Service Key and DLT-FBS have both consented to venue in this District in at least one of the contracts on which Oracle sues in this case.

20. Venue in this District is also appropriate because Service Key, Vines, and DLT-FBS, each have committed wrongful intentional acts, expressly aimed at Oracle, who Defendants knew or should have known is a resident of this District, and caused harm that they knew or should have known was likely to be suffered by Oracle in this District. As a result, each defendant would be amenable to personal jurisdiction if this District were a separate state, and therefore venue in this District is appropriate under 28 U.S.C. § 1400(a).

V. INTRADISTRICT ASSIGNMENT

21. This action alleges, among other things, claims for copyright infringement. As such, it is an intellectual property action and may be assigned on a district-wide basis pursuant to Civil L.R. 3-2(c).

VI. FACTUAL ALLEGATIONS

A. Oracle's Computer Systems and Support Materials

22. Oracle develops, manufactures, markets and distributes enterprise business hardware and software systems, and provides related technical support and consulting services. The hardware systems that Oracle develops and distributes involve several components, all of which Oracle supplies. In a simplified view, the foundation of the system (or "stack" as it is sometimes called) is typically storage and servers, such as Oracle's Sun servers. The server requires an operating system to run it, such as Oracle's Solaris operating system, which is an analog to Microsoft's Windows operating system for personal computers. A typical configuration would also employ a database to manage business data, middleware to allow the

1 database to interact with various applications that provide the business logic to be performed by
2 the system, and the applications themselves, such as human resources software for payroll
3 processing or financials software for financial reporting.

4 23. Oracle's comprehensive line of Sun server and storage systems provides
5 world-class performance for businesses of all sizes, and include some of the most reliable,
6 scalable, and energy-efficient systems in the industry. Oracle also provides the Solaris operating
7 system and related "firmware" to run its Sun servers. Solaris is one of the most advanced
8 operating systems available for enterprise use. It provides innovative, built-in features that
9 deliver breakthrough high availability, advanced security, efficiency, and industry-leading
10 scalability/performance, and are targeted at business customers.

11 24. As is typical in the computer industry, Oracle offers technical support
12 services for Solaris. For example, customers who own Oracle/Sun hardware may also purchase
13 technical support services from Oracle which entitle those customers to maintenance, updates,
14 bug fixes, and patches for their Oracle/Sun hardware, operating systems and firmware that run on
15 that hardware ("Solaris updates"). This support includes access to Oracle online support tools,
16 additional maintenance and upgrades for Oracle's Solaris operating system, patches, and
17 telephone or in-person assistance from Oracle technical support experts. Solaris updates are
18 available as downloads from Oracle's password-protected, secure customer support website.
19 Customers choose the patch or patch set to apply based on the issues that they seek to address
20 and the status of their particular system at the time the issue arises.

21 25. Typically, Oracle's technical support service agreements last for twelve
22 months. The customer may renew the agreement for additional twelve-month terms.

23 **B. Oracle's Support Websites and Terms Of Use**

24 26. After the Oracle/Sun combination, Oracle migrated the support resources
25 for Sun's computer hardware products to the My Oracle Support ("MOS") website, a password-
26 protected, web-based support portal. MOS provides a single, integrated support platform for
27 most Oracle products. After approximately December 12, 2010, Oracle customers could access
28 Solaris updates through MOS.

1 27. In order to get an MOS login credential, a customer must create an
 2 Oracle.com account. In order to create an Oracle.com account, a customer must submit certain
 3 information, and to agree to certain terms and conditions, including the Oracle.com and MOS
 4 Terms of Use. The Oracle.com Terms of Use apply to all users of Oracle's websites, and state:

5 *By accessing or using the Site or the Content provided on or*
 6 *through the Site, you agree to follow and be bound by the*
 7 *following terms and conditions concerning your access to and use*
 8 *of the Site and the Content provided on or through the Site*
 9 *("Terms of Use") and our Privacy Policy.*

10 28. The Oracle.com Terms of Use state that only authorized users may access
 11 secure areas of Oracle's website. They further state that registered users may not allow others to
 12 use their passwords or account information to access Oracle's websites:

13 *You agree not to attempt to gain unauthorized access to any parts*
 14 *of the Site or any Oracle accounts, computer systems or networks.*

15 [...]

16 *Access to and use of password protected or secure areas of the Site*
 17 *is restricted to authorized users only. You agree not to share your*
 18 *password(s), account information, or access to the Site. You are*
 19 *responsible for maintaining the confidentiality of password(s) and*
 20 *account information, and you are responsible for all activities that*
 21 *occur under your password(s) or account(s) or as a result of your*
 22 *access to the Site. You agree to notify Oracle immediately of any*
 23 *unauthorized use of your password(s) or account(s).*

24 29. Through the Oracle.com Terms of Use, users of Oracle's websites also
 25 agree to submit to California law and the jurisdiction of California courts for legal actions
 26 relating to the access to, or use of, Oracle's websites and/or the content they contain, and agree
 27 that venue for any such actions is proper in this District:

28 *All matters relating to your access to, and use of, the Site and*
 29 *Content provided on or through or uploaded to the Site shall be*
 30 *governed by U.S. federal law or the laws of the State of California.*
 31 *Any legal action or proceeding relating to your access to, or use*
 32 *of, the Site or Content shall be instituted in a state or federal court*
 33 *in San Francisco, San Mateo or Santa Clara County, California.*
 34 *You and Oracle agree to submit to the jurisdiction of, and agree*
 35 *that venue is proper in, these courts in any such legal action or*
 36 *proceeding.*

1 30. To the extent more than one version of the Oracle.com Terms of Use was
2 in effect during the time period relevant to the allegations in this Complaint, each version
3 contained provisions identical or substantially similar to those cited above.

4 31. Once a customer has established an account with Oracle.com, that
5 customer may also, if authorized to do so, sign up for MOS access, which has additional Terms
6 of Use.

7 32. When a customer signs up for MOS access, that customer must accept and
8 agree to abide by the My Oracle Support Terms of Use (“MOS Terms of Use”). The MOS Terms
9 of Use specify, among other things, that only authorized users may access MOS, and only for
10 authorized purposes, and that those authorized users may not use the material available through
11 MOS other than for “internal business operations.”

12 *You agree that access to My Oracle Support, including access to*
13 *the service request function, will be granted only to your*
14 *designated Oracle technical support contacts and that the*
15 *Materials may be used only in support of your authorized use of*
16 *the Oracle programs and/or hardware for which you hold a*
17 *current support contract from Oracle. Unless specifically provided*
18 *in your agreement with Oracle, the Materials may not be used to*
19 *provide services for or to third parties and may not be shared with*
20 *or accessed by third parties. However, the Materials may be*
21 *shared with or accessed by third parties who are your agents or*
22 *contractors acting on your behalf solely for your internal business*
23 *operations and you are responsible for their Compliance with*
24 *these My Oracle Support Terms of Use. You agree that you will not*
25 *access or use My Oracle Support in any manner that could*
26 *damage, disable, overburden, impair, or otherwise result in*
27 *unauthorized access to or interference with, the proper functioning*
28 *of any Oracle accounts, systems, or networks.*

29 33. The MOS Terms of Use further prohibit a customer from using,
30 disclosing, transmitting, or copying any of the materials contained on the website other than to
31 support that customer’s own authorized use of those materials for which that customer holds a
32 current support contract from Oracle:

33 *[T]he information contained in the [My Oracle Support] Materials*
34 *is the confidential proprietary information of Oracle. You may not*
35 *use, disclose, reproduce, transmit, or otherwise copy in any form*
36 *or by any means the information contained in the Materials for any*
37 *purpose, other than to support your authorized use of the Oracle*
38 *programs and/or hardware for which you hold a current support*

1 *contract from Oracle, without the prior written permission of*
 2 *Oracle.*

3 34. To the extent there was more than one version of the MOS Terms of Use
 4 in effect during the time period relevant to the allegations in this Complaint, each version
 5 contained provisions identical or substantially similar to those cited above.

6 35. Furthermore, at all relevant times, the main MOS web page—which all
 7 users must visit to access MOS—stated that “Use of this site is subject to the Legal Notices and
 8 Terms for Use and Privacy Statement located on this site,” which include the MOS Terms of
 9 Use. Therefore, any use of MOS is governed by the MOS Terms of Use.

10 36. The Oracle.com Terms of Use and the MOS Terms of Use are valid,
 11 enforceable contracts between Oracle and all customers or other users who register for, or access
 12 MOS.

13 37. Service Key and DLT-FBS registered to access, and accessed, MOS. Each
 14 agreed to the MOS and Oracle.com Terms of Use.

15 **C. DLT-FBS Breached Its OPN Agreement By Providing**
 16 **Unauthorized Access To Oracle’s Software And Support**
 17 **Websites**

18 38. DLT-FBS’ OPN membership was predicated on its alleged interest in
 19 becoming a reseller of Oracle’s products, further evidenced by its execution of a FUDA on
 20 August 29, 2011. The OPN Agreement specifies, among other things, that DLT-FBS may not
 21 “use or duplicate the Oracle property provided to you by Oracle for any purpose other than as
 22 specified in the OPN policies or in this agreement or make the Oracle property available to
 23 unauthorized third parties.” The OPN Agreement also specifies that DLT-FBS may not “use the
 24 Oracle property for your own internal business operations, or use the Oracle property or make
 25 the Oracle property available in any manner to any third party for use in the third party’s
 26 business operations or for any other commercial or production use.” The OPN Agreement
 27 specifies that it is “governed by the substantive and procedural laws of the State of California
 28 and [DLT-FBS] and Oracle agree to submit to the exclusive jurisdiction of, and venue in, the

1 courts in San Francisco, San Mateo, or Santa Clara counties in California in any dispute arising
2 out of or relating to this agreement.”

3 39. The OPN Agreement also states that “Oracle may audit [DLT-FBS’s] use
4 of the Oracle property.” DLT-FBS also agreed “to cooperate with Oracle’s audit and provide
5 reasonable assistance and access to information including but not limited to relevant books,
6 records, agreements, servers, technical personnel, and order reporting systems.” DLT-FBS also
7 agreed to an audit in the FUDA, which states “Oracle may audit your distribution of the
8 programs, hardware, learning credits and services and your activities under this agreement . . .
9 You agree to cooperate with Oracle’s audit and provide reasonable assistance and access to
10 information including but not limited to relevant books, records, agreements, servers, technical
11 personnel, and order reporting systems.”

12 40. DLT-FBS breached its agreements with Oracle by, among other things:
13 (1) using its CSI number and access credentials for Oracle’s support websites for the
14 unauthorized purpose of accessing and taking Oracle’s proprietary software products, such as
15 certain software patches and updates; (2) using these software products to provide unauthorized
16 third party support services to third party customers that DLT-FBS contracted with directly;
17 (3) distributing these software products to third parties who did not have active service support
18 contracts with Oracle, and who could not legally receive them (in its own words, it “facilitated
19 the obtainment of such patch releases as directed by the equipment owners”); and (4) distributing
20 and/or facilitating the distribution of access credentials for Oracle’s support websites under false
21 pretenses to unauthorized third parties (who did not know that DLT-FBS lacked the authority it
22 claimed).

23 41. By trafficking in Oracle website credentials, DLT-FBS enabled
24 unauthorized third parties directly to access Oracle’s secure support websites and download
25 Oracle’s proprietary software products without permission from Oracle. On information and
26 belief, and subject to further discovery to identify additional customers, DLT-FBS provided such
27 access to the following customers:
28

- 1 • The Space and Naval Warfare Systems Command Systems Center in Atlantic
- 2 Charleston, a division of the U.S. Navy identified in DLT-FBS's contracts as "US
- 3 NAVY SPAWARSYSCEN Atlantic Charelston;
- 4 • The Space and Naval Warfare Systems Command Systems Center in Atlantic New
- 5 Orleans, a division of the U.S. Navy identified in DLT-FBS's contracts as
- 6 SPAWARSYSCENLANT New Orleans Office;
- 7 • The Naval Education and Training Professional Development and Technology
- 8 Center, a division of the U.S. Navy identified in DLT-FBS's contracts as NETPDTC -
- 9 Acquisition Management;
- 10 • The Naval Criminal Investigative Service, a division of the U.S. Navy identified in
- 11 DTL-FBS's contracts as NCIS Procurement and Logistics;
- 12 • The Department of Health and Human Services and the Food and Drug
- 13 Administration, identified in DLT-FBS's contracts as DHHS/FDA/OAGS/DSCI;
- 14 • Mission and Installation Contracting Command at Fort Eustis, a division of the U.S.
- 15 Army identified in DLT-FBS's contracts as MICC Center Fort Eustis;
- 16 • The Army Reserve Contracting Center-East a division of the U.S. Army; and
- 17 • Army Fort Sam Houston

18 42. On August 2, 2011, DLT-FBS contracted with the Department of Health
 19 and Human Services and the Food and Drug Administration for the provision of support on
 20 Oracle/Sun products. This contract was numbered GS-35F-0472X. In that contract, DLT-FBS
 21 stated that all "upgrades/patch releases" would come "directly from Oracle/Sun." Ex. A (excerpts
 22 of DLT-FBS contracts) at FBSCGov000069. This representation was false. DLT-FBS knew that
 23 it had no authorization to provide its customers, including the Department of Health and Human
 24 Services and the Food and Drug Administration, access to Oracle's support websites or to offer
 25 support "directly from Oracle/Sun."

26 43. On September 23, 2011, Jennifer Fagan of the Food and Drug
 27 Administration wrote DLT-FBS a letter expressing concern regarding DLT-FBS's performance
 28 under its contract with DLT-FBS numbered GS-35F-0472X, and order number

1 HHSF223201110349G. Ex. B. Ms. Fagan wrote that since September 7, 2011 the FDA had been
2 unable to download upgrades and patches from Oracle's websites. Ms. Fagan then demanded
3 DLT-FBS send the FDA the necessary upgrades and patches. On September 27, 2011, DLT-FBS
4 employee Geoff Prosser ("Prosser") used DLT-FBS's CSI number to create access credentials to
5 Oracle's secure support website for the FDA without authorization to do so and in violation of
6 Oracle's rights and Oracle's contractual agreements with DLT-FBS.

7 44. On October 21, 2011, Prosser notified two consultants named Ken Jackson
8 and Eric Elan that the Space and Naval Warfare Systems Command Systems Center in Atlantic
9 New Orleans requested Solaris updates that it was not entitled to receive, and asked the
10 consultants to identify a proactive method of notifying DLT-FBS's customers that Solaris
11 updates were available. Ex. C. On October 25, 2011, Prosser directed Jackson to send the
12 recently released Oracle patch to several of DLT-FBS's customers that were not authorized to
13 receive it, such as the customers identified in paragraph 41. Ex. D.

14 45. In addition, on October 21, 2011, Rob Muse ("Muse") a DLT-FBS
15 contractor (and a former Service Key employee), sent an email to DLT-FBS customer Charles
16 Buzbee of the U.S. Navy – with the subject line "DLT Ticket #11195" – providing him with a
17 temporary login to Oracle's support websites. Ex. E. Neither Muse nor DLT-FBS had any
18 authorization to provide any third party with these access credentials. Muse reported directly to
19 DLT-FBS executives on the status of these efforts to provide unauthorized software support to
20 DLT-FBS's customers. For instance, on February 1, 2012 Muse told DLT-FBS employees Anne
21 Rose, Geoff Prosser and Michael Johnson that he would try to send Khan Nguyen, an employee
22 of the U.S. Navy an Oracle Solaris update. Ex. F.

23 46. DLT-FBS similarly and fraudulently provided such access credentials to
24 the Space and Naval Warfare Systems Command Systems Center in Atlantic Charleston in
25 connection with its contract numbered GS-35F-0472X and delivery order no. N65236-11-F-6499
26 signed on September 2, 2011, and delivery order no. N65236-11-F-L027 signed on August 30,
27 2011.

1 47. DLT-FBS similarly and fraudulently provided such access credentials to
2 the Naval Education and Training Professional Development and Technology Center in
3 connection with its contract numbered GS-35F-0472X and delivery order no. N68322-12-F-
4 M014 signed on September 29, 2011, and with its contract numbered GS-35F-0563U and
5 delivery order no. N68322-13-F-M004 signed on August 31, 2012.

6 48. DLT-FBS similarly and fraudulently provided such access credentials to
7 the Naval Criminal Investigative Service in connection with its contract numbered GS-35F-
8 0472X and delivery order no. N63285 121 0018 signed on October 14, 2011.

9 49. DLT-FBS similarly and fraudulently provided such access credentials to
10 the Mission and Installation Contracting Command at Fort Eustis in connection with its contract
11 numbered GS-35F-0472X and Order no. W911S0-12-F-0023 signed May 9, 2012, and the
12 contract numbered W911S0-12-F-0018 signed on June 5, 2012.

13 50. DLT-FBS similarly and fraudulently provided such access credentials to
14 Army Reserve Contracting Center-East in connection with its contract numbered GS-35F-0472X
15 and Order no. W911S1-11-F-0419 signed September 29, 2011.

16 51. Through the conduct described above, DLT-FBS induced all of its
17 customers of Oracle's support services to cancel their support contracts with Oracle by falsely
18 representing to those customers that DLT-FBS could legally provide service and support for their
19 Oracle computer products less expensively than Oracle.

20 52. On November 11, 2011, DLT-FBS told a representative of an agency of
21 the U. S. Navy who inquired about obtaining Oracle Premier Support that "Oracle Premier
22 Support is just a brand name," and that DLT-FBS could provide "premier support" that included
23 "firmware and patches" and "product documentation." That was false, and DLT-FBS knew it
24 was false at the time. Ex. G at 1. DLT-FBS made this representation to each of its Sun customers
25 (those currently known are listed in paragraph 41 above though Oracle believes discovery will
26 reveal additional customers).

27 53. As part of DLT-FBS's contract numbered GS-35F-0472X with sub-
28 entities of the U.S. Navy, it promised to deliver Oracle Premier Support, even though it was not

1 authorized to do so. On September 1, 2011, Cheryl Bruza of SPAWAR (one such sub-entity)
 2 asked DLT-FBS, “Do you have an authorization letter from Oracle to be an Oracle Premier
 3 Support provider/reseller? Please provide the authorization given to your company from Oracle.”
 4 Ex. H at 3. In response on that same day, DLT-FBS’s Michael Johnson attached a copy of DLT-
 5 FBS’s OPN agreement and falsely stated: “Our partner level provides us with access to all
 6 Sun/Oracle software updates, patch releases, micro code upgrades, etc. for the current versions of
 7 the software on all of the equipment under the subject contract.” *Id.* at 2. While DLT-FBS’s OPN
 8 membership did provide it with certain limited access to Oracle’s support website, DLT-FBS
 9 knew that it could not use Oracle’s support website or the valuable Solaris updates accessible
 10 through it to deliver its own support services to end user customers, including SPAWAR.

11 54. DLT-FBS’s September 29, 2011 contract with the Naval Education and
 12 Training Professional Development and Technology Center, numbered GS-35F-0472X and
 13 delivery order no. N68322-12-F-M014 states that DLT-FBS was providing “Oracle Premier
 14 Support.” Ex. A at FBSCGov000011, 000012. That very customer – indeed, literally the same
 15 person who signed the agreement on behalf of NETPDTC – later objected when she learned the
 16 truth that DLT-FBS was not providing Oracle-brand support. Ex. G at 5 (Email from Jo Ann
 17 Stapleton, Nov. 10, 2011 at 4:16 pm) (“I am a bit confused because the order DLT was awarded
 18 and accepted states Oracle Premier Support not equivalent as you state below. It must be Oracle
 19 Premier Support.”). Oracle believes discovery will reveal other instances of this conduct.

20 55. Upon information and belief, DLT-FBS induced each of its Sun customers
 21 (those currently known are listed in paragraph 41 above though Oracle believes discovery will
 22 reveal additional customers) to cancel their support contracts with Oracle by falsely representing
 23 that it could provide the same level of support as Oracle, including access to Oracle’s proprietary
 24 software.

25 56. DLT-FBS also falsely represented to its customers and potential customers
 26 that they could still obtain—from DLT-FBS—Solaris updates for their Oracle computer products
 27 if they cancelled their support contracts with Oracle. For example, on September 1, 2011,
 28 Michael Johnson of DLT-FBS told a representative of an agency of the U. S. Navy “[DLT-

1 FBS's] partner level provides us with access to all Sun/Oracle software updates, patch releases,
 2 micro code upgrades, etc. for the current versions of the software on all of the equipment under
 3 the subject contract." Ex. H at 2. This statement was knowingly false. It also has grave
 4 consequences for Oracle; the materials referred to in DLT-FBS's statement include proprietary
 5 Solaris updates and many other mission critical computer files necessary to run properly Oracle's
 6 Sun servers and the Solaris operating system. Oracle partners may not sell this proprietary and
 7 highly valuable intellectual property of Oracle to customers through unauthorized technical
 8 support contracts, nor may customers without active support contracts with Oracle have access to
 9 them.

10 57. On November 7, 2011, Oracle terminated DLT-FBS' OPN Agreement and
 11 its FUDA because DLT-FBS repeatedly had breached those agreements by, among other things,
 12 misrepresenting the scope of its relationship with Oracle and its ability to access and use Oracle
 13 support services or products for the benefit of third parties. Oracle also discovered that DLT-FBS
 14 had provided unauthorized access to Oracle's support website and software to third parties, and
 15 had trafficked in Service Key's Oracle website log on credential, as explained below.

16 **D. Service Key Provided Others With Unauthorized Access To**
 17 **Oracle's Software And Support Websites.**

18 58. Service Key purchased hardware from Oracle/Sun and signed an End User
 19 Purchasing Agreement with Oracle. Pursuant to that agreement, Service Key agreed:

20 *to permit Sun, or Sun's independent audit firm, to access and audit*
 21 *Company systems, facilities and records (no more than one (1)*
 22 *time per year unless Sun has evidence indicating [Service Key] is*
in breach of this Agreement) to the extent necessary to determine
Company's compliance with Sun's license grants."

23 59. Service Key has maintained and renewed support service agreements with
 24 Oracle since at least 2006 for three pieces of Oracle/Sun computer hardware that Service Key
 25 bought from Oracle/Sun. The general terms of these renewal agreements are substantially
 26 similar. They state in part that "SERVICE KEY agrees that the ordered services shall be used
 27 solely by the Customer [i.e. Service Key]. . . ." The general terms of each of these renewal
 28 agreements also state that "Technical support is provided under Oracle's technical support

1 policies in effect at the time the services are provided.” Oracle terminated these agreements with
2 Service Key on February 17, 2012 due to Service Key's material, non-remediable breaches of
3 these contracts.

4 60. Muse is listed as the “Contract Contact” and/or “Software Recipient” for
5 Service Key on a number of Service Key’s support services agreements and/or renewal
6 agreements with Oracle/Sun.

7 61. Oracle’s Hardware and Systems Support Policies (which Service Key’s
8 2011 renewal agreements reference) specify that Service Key may only download Solaris
9 updates for use with the specific Sun computers that Service Key owns and that its active support
10 contracts identify: “Customers with unsupported hardware systems are not entitled to download
11 or receive updates, maintenance releases, patches, telephone assistance, or any other technical
12 support services for unsupported hardware systems.”

13 62. Oracle’s Hardware and Systems Support Policies also specify that “Your
14 technical contacts are the sole liaisons between you and OSS [Oracle Support Services] for
15 technical support of programs,” and permit a customer to designate one primary and four backup
16 individuals per data center location to serve as liaisons with OSS.

17 63. Oracle’s Hardware and Systems Support Policies further state that “My
18 Oracle Support is Oracle’s customer support website for hardware support. Access to My Oracle
19 Support is governed by the Terms of Use posted on the My Oracle Support web site;” and that
20 “Access to My Oracle Support is limited to your designated technical contacts.” These terms
21 make clear that Service Key may not permit or enable anyone other than its own specifically
22 designated technical contact people to access MOS.

23 64. Service Key advertises itself as an “independent service and maintenance
24 organization” and as “one of the industry’s leading providers of alternative maintenance and
25 managed services.” Service Key’s website states that it can provide support services for products
26 developed by most of the leading enterprise hardware manufacturers, including Oracle’s Sun
27 hardware products. Service Key’s business model is to provide support services to other third
28 party support services companies, such as DLT-FBS, that act as its “partners” and sell those

1 services to end customers that use the hardware products of manufacturers like Oracle. Service
 2 Key also provides support services on Oracle/Sun products directly to end-user customers,
 3 usually under contract with a “partner” that subcontracts these services through Service Key.
 4 Service Key touts that “On average, pricing that is provided by Service Key to our partners
 5 ranges from 30%-80% off of manufacturer’s [sic] published list prices. The partner then
 6 determines the markup to their customer.” Service Key also states on its website that it is “your
 7 silent partner in success. . . . Only your brand (never Service Key’s) appears on our partner sites
 8 or correspondence collateral. Calls to the Service Key help desk are answered in our partner’s
 9 name.”

10 65. Pursuant to its license and support contracts with Oracle, Service Key may
 11 only use its Oracle login credentials for its own internal business use to support the specific
 12 pieces of Oracle computer hardware that it owns and for which it has purchased service
 13 agreements from Oracle. It appears that Service Key bought support from Oracle in order to
 14 acquire MOS access credentials and Oracle’s software to resell to third parties in violation of
 15 Service Key’s agreements with Oracle, and to use to market itself to its “partners” as having the
 16 (false and illegal) capability to provide Solaris updates to Oracle’s end-user customers.

17 66. For instance, Service Key fraudulently told its customers in marketing
 18 material entitled the Sun Alternative Maintenance Guide that “Service Key is the vehicle to assist
 19 you in getting the [Sun Solaris] patches, minor updates, and releases.” Ex. I at 2.

20 67. Service Key then did what it said it would, and unlawfully used its MOS
 21 access credentials to provide Solaris updates directly to end-user customers who have no right to
 22 receive them. On information and belief, and subject to further discovery to identify additional
 23 customers, the customers to whom Service Key provided Solaris updates are: SITA; Federal
 24 Home Bank of Atlanta; University of Utah Hospital; TelCel; Cablevision - Production; Bulletin;
 25 Antelope Valley; Weldon William & Lick; Yodlee, Inc. - Canvas; Cooke Communications NC;
 26 Lackland AFB; Lubbock Avalanche Journal; USGS; Savannah Morning News; ION Media
 27 Networks; Investment Company Institute; 1013 Communications LLC (East Valley Tribune);
 28 Topeka Capital - Journal; Athens Banner - Herald; Amarillo Globe-News; Arkansas Democrat

1 Gazette; Phoenix Color; Florida Times-Union; Waco Tribune Herald; AARP; Meredith; Autoliv
 2 ASP Inc.; CompuCredit; Phototype; Malone Advertising; Florida Today Newspaper; Adtran,
 3 Inc.; Ball Aerospace; Mundocom USA; Ladish Co.; Maximus, Inc.; Alloy Education; Image
 4 Dynamics; PEEQ; Allen Press, Inc.; and ColorEdge Visual.

5 68. Service Key occasionally provided Solaris updates to these customers on
 6 behalf of other companies that contracted directly with the end-users. On information and belief,
 7 and subject to further discovery to identify additional companies, these companies are: NAPC,
 8 Inc.; Rorke Data; Presido Corporation; North American Systems International, Inc.; Atlantix
 9 Global Systems, LLC; Digital Technology International, Inc; Canvas Systems (Avnet
 10 Remarketing Solutions); Edge Digital, LLC; SecureTek Group, Inc.; Acclinet Corporation;
 11 Experis Technology Corp.; Recurrent Technologies, Inc.

12 69. Service Key also falsely told its customers in the Sun Alternative
 13 Maintenance Guide, that were “entitled to [Oracle’s software] based on the end-user original
 14 license agreement.” Ex. I at 5. Service Key knew this was false, as evidenced by the fact that its
 15 renewed its own support agreement with Oracle (which has now been terminated) precisely
 16 because it was not entitled to ongoing Oracle’s support materials simply by virtue of its original
 17 license agreement.

18 70. On January 17, 2011, Service Key customer Allen Press, Inc. told Service
 19 Key, “We need the following Sun patch, but do not have access/permission to download this
 20 patch with our login for Sun/Oracle. Do you have someone that could get us this patch?” Service
 21 Key employee Scott Hodgson then sent the customer the Solaris update, even though Service
 22 Key had no authorization to do so. Ex. J at 2.

23 71. On February 10, 2012, Service Key employee Paul Coffey told Mike
 24 Jacovitch, a consultant that worked with Service Key, that an end-user customer should update
 25 its version of Solaris, and install Solaris patches to resolve a “system panic.” Ex. K. Coffey then
 26 provided Jacovitch with a link to download the Solaris patches, even though he was not
 27 authorized to do so, and the patches itself included a readme file that identifies the software as
 28 copyrighted by Oracle, and also a legal_license.txt file that states the files “are the confidential

1 information of Sun and copyrighted by Sun. You may not reproduce or distribute the Software or
2 Information to any third party without prior written authorization from Sun.” Oracle believes
3 discovery will reveal additional instances of this conduct.

4 72. On June 20, 2011, Mike Jacovitch noted in service records that Coffey
5 provided customer NAPC, Inc. with the latest Solaris patch, even though Service Key had no
6 authorization to do so. Ex. L at 4.

7 73. Since at least September, 2010, Service Key has repeatedly downloaded
8 large volumes of Oracle’s software without authorization, including multiple versions of Solaris
9 updates. Upon information and belief, these downloads were not for use with the three Service
10 Key computers that were subject to an active service contract with Oracle; but rather were used
11 to create an unauthorized library of Oracle software for Service Key to use to provide illicit
12 copies of Oracle’s software to third parties including its customers.

13 74. ServiceKey has also unlawfully distributed its MOS credentials to its
14 customers, who were not authorized to use them. Many unauthorized entities have used Service
15 Key’s access credentials to access the MOS website from a variety of locations/IP addresses to
16 download a substantial amount of software that is well in excess of the quantities typical of a
17 normal user. Unlicensed entities unrelated to Service Key used Service Key’s access credentials
18 to download over 200 items of Oracle software on September 7, 2011; more than 200 additional
19 items the following day; and over 800 more on October 4, 2011.

20 75. In addition, on July 23 and November 6, 2011, a user with an IP address
21 owned by third-party Ball Corporation accessed Oracle’s protected support websites using
22 credentials registered to Service Key and downloaded Oracle’s copyrighted Solaris updates.
23 Oracle never authorized Service Key or anyone else to provide Ball Corporation with these
24 access credentials.

25 76. On July 14, and November 10 and 15, 2011, a user with an IP address
26 owned by third-party Department of Defense accessed Oracle’s protected support websites using
27 credentials registered to Service Key and downloaded Oracle’s copyrighted Solaris updates.
28

1 Oracle never authorized Service Key or anyone else to provide the Department of Defense with
2 these access credentials.

3 77. On September 8, October 21, and December 1, 2011, users with IP
4 addresses owned by unknown third-parties accessed Oracle's protected support websites using
5 credentials registered to Service Key and downloaded Oracle's copyrighted Solaris updates.
6 Oracle never authorized Service Key or anyone else to provide the third parties with these access
7 credentials. Oracle believes discovery will reveal additional instances of this conduct.

8 78. Service Key and Vines also falsely represented to customers and potential
9 customers that they could still obtain—from Service Key—legal copies of software patches and
10 updates for their Oracle computer products if they cancelled their support contracts with Oracle.

11 79. For example, at an October, 2010 ASCDI meeting in San Francisco,
12 California, Vines falsely stated to a number of customers and/or potential customers that Service
13 Key had made a deal with Sun and/or Oracle that would allow Service Key to provide Solaris
14 updates. This statement was knowingly false. Service Key did not have authorization to sell or
15 provide to others Oracle's intellectual property, including proprietary Solaris updates.

16 80. Vines made substantially similar false statements regarding Service Key's
17 authorization and ability to provide software maintenance support related to Solaris to customers
18 and/or potential customers at an XChange conference in Las Vegas, Nevada, in November, 2010.

19 81. Upon information and belief, at all relevant times, Vines was aware of
20 and/or personally directed the activities of Service Key alleged here.

21 82. Upon information and belief, Service Key also encouraged certain of its
22 customers to maintain an active service support relationship with Oracle for some of that
23 customer's Sun computers, and Service Key would use the customer's own MOS credentials to
24 perform unauthorized downloads of Oracle's software for use with other, unsupported machines.

25 **E. Defendants' Wrongful Conduct Injured Oracle**

26 83. Defendants willfully, intentionally, and knowingly engaged in the
27 wrongful conduct alleged in this Complaint, including Defendants' copyright infringement,
28

violations of the Computer Fraud and Abuse Act, false advertising, breaches of contract, interference with Oracle's business relationships, fraud, and other unfair business practices.

84. Specifically, upon information and belief, Defendants illicitly provided access credentials for Oracle's secure support websites and/or copies of Oracle's proprietary software to end-user customers, or to third-party support providers who in turn provide those access credentials and/or that software to customers. Defendants enable those customers to access Oracle's secure support website, without Oracle's permission and in violation of those websites' terms of use, and download unlicensed copies of Oracle's proprietary software and without paying Oracle for it.

85. As a direct and proximate result of these acts, Oracle has suffered injury, damage, loss, and harm, including, but not limited to, loss of profits from sales to current and potential customers of Oracle support services and/or licenses for Oracle software programs, and violation of Oracle's intellectual property rights. The wrongful conduct by the Defendants alleged above was a substantial factor in causing this harm.

First Claim for Relief

Copyright Infringement

(By Oracle Against All Defendants)

86. Oracle incorporates each of the allegations in preceding paragraphs 1-85 of this Complaint as though fully set forth here.

87. Oracle owns a valid and enforceable copyright in all of its software and support materials, including the Solaris updates, which are creative works of original authorship. Oracle has pre-existing, and will obtain from the Register of Copyrights, Certificates of Registration that cover many of the software and support materials taken and copied by Service Key, DLT-FBS, and others acting in concert with them.²

² Oracle reserves the right to amend its Complaint to include additional registered works as it continues to analyze the scope of Defendants' wrongful downloading, and in the event that it obtains additional copyright registrations for software and support materials taken and copied by Defendants beyond the registrations it has already.

88. Oracle holds all of Sun's interest, rights, and title to the copyrights at issue in this action.

89. Oracle owned one or more exclusive rights in certain copyrights at issue in this case at a point in time during which Defendants infringed those exclusive rights.

90. Defendants have infringed copyrights in Oracle software, including the software covered by these certificates. These certificates are identified, dated, and numbered as follows:

Title of Work	Date of Registration	Registration Number
Solaris 8 (SPARC Platform Edition)	June 19, 2000	TX 5-138-319
Solaris 10 operating system	April 19, 2005	TX 6-086-753

91. These registrations generally cover versions of Oracle's Solaris operating system and other software, including the updates, patches and fixes incorporated into each relevant version, which Defendants and others acting in concert with them copied without a license.

92. Through the acts alleged above, Defendants and those acting in concert with them have violated Oracle's exclusive rights to reproduce and make copies of its copyrighted software, including materials covered by the registrations listed above by, among other things, downloading (copying) Oracle's copyrighted software onto their computers in violation of 17 U.S.C. § 106.

93. Defendants have also violated Oracle's exclusive rights by downloading, copying, creating derivative works from and/or distributing Oracle's software, via posting to other websites, by electronic mail, through file transfer protocol, or otherwise, in violation of 17 U.S.C. § 106.

94. Defendants and those acting in concert with them were not authorized to copy, download, reproduce, create derivative works from, distribute, or publicly display Oracle's copyrighted software except as authorized by and in support of a specifically licensed use, and with respect only to software for which they had a current right to have and use.

95. In addition to directly infringing Oracle's exclusive rights, Defendants have contributorily and/or vicariously infringed Oracle's exclusive rights in the software by

controlling, directing, intentionally encouraging, inducing, or materially contributing to the copying, distribution, public display, and/or creation of derivative works from Oracle's copyrighted software. Defendants also obtained a direct financial benefit from the above alleged infringing activities while declining to exercise their right to stop it or limit it.

96. Defendants knew or should have known that copying, distributing, publicly displaying, and creating derivative works of and from Oracle's software, which Defendants had no license to copy, distribute, publicly display, or create derivative works from; or controlling, directing, intentionally encouraging, inducing, or materially contributing to others' efforts to do so, infringed Oracle's exclusive rights in that software.

97. Oracle is entitled to damages from Defendants in an amount to be proven at trial, including profits attributable to the infringement not taken into account in computing actual damages under 17 U.S.C. § 504(b). Oracle America is entitled to statutory damages under 17 U.S.C. § 504(c) based on Defendants' infringements after the dates of copyright registration.

98. Defendants' infringement of Oracle's exclusive rights has also caused Oracle irreparable injury. Unless restrained and enjoined, Defendants will continue to commit such acts. Oracle's remedies at law are not adequate to compensate it for these inflicted and threatened injuries, entitling it to remedies, including injunctive relief as provided by 17 U.S.C. § 502, and an order impounding or destroying any and all infringing materials pursuant to 17 U.S.C. § 503.

Second Claim for Relief

Violation of the Federal Computer Fraud and Abuse Act

(18 U.S.C. §§ 1030(a)(6)(A) (By Oracle Against Service Key and DLT-FBS))

99. Oracle incorporates each of the allegations in the preceding paragraphs of this Complaint as though fully set forth here, including without limitation Paragraphs 1-98.

100. Oracle's secure MOS website is hosted by, and allows access to, certain of Oracle's computers, computer systems, and computer networks, which are protected computers within the meaning of 18 U.S.C. § 1030(e)(2). Those computers, computer systems, and computer networks are data storage facilities directly related to and operating in conjunction with

1 Oracle's computers, which are used in and affect interstate and foreign commerce, including by
2 providing access to worldwide communications through applications accessible through the
3 Internet.

4 101. Service Key and DLT-FBS have violated the Computer Fraud and Abuse
5 Act, 18 U.S.C. § 1030(a)(6)(A), by knowingly and with the intent to defraud trafficking in
6 passwords or similar information through which Oracle's computers and support websites may
7 be accessed without authorization.

8 102. On February 15, 2011, DLT-FBS entered into the OPN Agreement in
9 order to join the OPN, and to obtain access to MOS. When entering into this agreement, DLT-
10 FBS represented and promised, among other things, that it would not "use or duplicate the
11 Oracle property provided to [it] for any purpose other than as specified in the OPN policies or in
12 [the OPN Agreement]," and that it would not "make the Oracle property available to
13 unauthorized third parties." At the time DLT-FBS made these representations and promises to
14 Oracle, DLT-FBS intentionally failed to disclose that it planned to use its access to MOS and
15 Oracle's software to provide support to its customers by making available access credentials for
16 Oracle's websites and materials downloaded from Oracle's websites to customers who did not
17 have authorization from Oracle to access MOS or download Oracle software.

18 103. Oracle, at the time DLT-FBS made these promises and took the actions
19 alleged, reasonably relied on DLT-FBS's deception, was ignorant of DLT-FBS's secret intention
20 to provide DLT-FBS's customers with access credentials to Oracle's websites and/or proprietary
21 software downloaded from Oracle's websites, and could not, in the exercise of reasonable
22 diligence, have discovered DLT-FBS's secret intention. In reliance on DLT-FBS's promises,
23 Oracle permitted DLT-FBS to join the OPN and provided DLT-FBS with access to MOS and/or
24 continued allowing DLT-FBS to access MOS. If Oracle had known of DLT-FBS's actual
25 intention, Oracle would not have allowed DLT-FBS to join the OPN or to access MOS.

26 104. As a proximate result of DLT-FBS's fraudulent conduct, Oracle was
27 damaged by, among other things the unauthorized use of MOS and its software by parties who
28 had not paid Oracle for it, in an amount to be proven at trial.

1 105. On August 2, 2011, DLT-FBS contracted with the Department of Health
2 and Human Services and the Food and Drug Administration for the provision of support on
3 Oracle/Sun products. This contract was numbered GS-35F-0472X. In that contract, DLT-FBS
4 stated that all “upgrades/patch releases” would come “directly from Oracle/Sun.” Ex. A at
5 FBSCGov000069. This representation was fraudulent. DLT-FBS knew that it had no
6 authorization to provide its customers, including the Department of Health and Human Services
7 and the Food and Drug Administration, access to Oracle’s support websites.

8 106. On September 23, 2011, Jennifer Fagan of the Food and Drug
9 Administration wrote DLT-FBS a letter expressing concern regarding DLT-FBS’s performance
10 under its contract with DLT-FBS numbered GS-35F-0472X, and order number
11 HHSF223201110349G. Ms. Fagan wrote that since September 7, 2011 the FDA had been unable
12 to download upgrades and patches from Oracle’s websites. Ms. Fagan then demanded DLT-FBS
13 send the FDA the necessary upgrades and patches. Ex. B. On September 27, 2011, DLT-FBS
14 employee Geoff Prosser used DLT-FBS’s CSI number to create access credentials to Oracle’s
15 secure support website for the FDA without authorization to do so and in violation of Oracle’s
16 rights and Oracle’s contractual agreements with DLT-FBS.

17 107. As part of DLT-FBS’s contract numbered GS-35F-0472X with sub-
18 entities of the U.S. Navy, it promised to deliver Oracle Premier Support, even though it was not
19 authorized to do so. Ex. A at FBSCGov000011-12. On September 1, 2011, Cheryl Bruza of
20 SPAWAR (one such sub-entity) asked DLT-FBS, “Do you have an authorization letter from
21 Oracle to be an Oracle Premier Support provider/reseller? Please provide the authorization given
22 to your company from Oracle.” Ex. H at 3. In response on that same day, DLT-FBS’s Michael
23 Johnson attached a copy of DLT-FBS’s OPN agreement and falsely stated: “Our partner level
24 provides us with access to all Sun/Oracle software updates, patch releases, micro code upgrades,
25 etc. for the current versions of the software on all of the equipment under the subject contract.”
26 *Id.* at 2. While DLT-FBS’s OPN membership did provide it with access to Oracle’s support
27 website, DLT-FBS knew that it could not use Oracle’s support website or the valuable SSM’s
28

1 accessible through it to deliver its own support services to end user customers including
2 SPAWAR.

3 108. On October 21, 2011, DLT-FBS contractor Rob Muse sent an email to
4 DLT-FBS customer Charles Buzbee of the U.S. Navy – with the subject line “DLT Ticket
5 #11195” – providing him with a temporary login to Oracle’s support websites. Ex. E. Neither
6 Muse nor DLT-FBS had any authorization to provide any third party with these access
7 credentials.

8 109. DLT-FBS similarly and fraudulently provided such access credentials to
9 the Space and Naval Warfare Systems Command Systems Center in Atlantic Charleston in
10 connection with its contract numbered GS-35F-0472X and delivery order no. N65236-11-F-6499
11 signed on September 2, 2011, and delivery order no. N65236-11-F-L027 signed on August 30,
12 2011.

13 110. DLT-FBS similarly and fraudulently provided such access credentials to
14 the Naval Education and Training Professional Development and Technology Center in
15 connection with its contract numbered GS-35F-0472X and delivery order no. N68322-12-F-
16 M014 signed on September 29, 2011, and with its contract numbered GS-35F-0563U and
17 delivery order no. N68322-13-F-M004 signed on August 31, 2012.

18 111. DLT-FBS similarly and fraudulently provided such access credentials to
19 Naval Criminal Investigative Service in connection with its contract numbered GS-35F-0472X
20 and delivery order no. N63285 121 0018 signed on October 14, 2011.

21 112. DLT-FBS similarly and fraudulently provided such access credentials to
22 Mission and Installation Contracting Command at Fort Eustis in connection with its contract
23 numbered GS-35F-0472X and Order no. W911S0-12-F-0023 signed May 9, 2012, and the
24 contract numbered W911S0-12-F-0018 signed on June 5, 2012.

25 113. DLT-FBS similarly and fraudulently provided such access credentials to
26 Army Reserve Contracting Center-East in connection with its contract numbered GS-35F-0472X
27 and Order no. W911S1-11-F-0419 signed September 29, 2011. Oracle believes discovery will
28 reveal additional instances of this conduct.

1 114. On May 16, 2011, December 8, 2011, and January 26, 2012, Service Key
2 renewed technical support service agreements with Oracle that covered certain specific
3 Oracle/Sun hardware servers that Service Key owns. When it entered into these renewal
4 agreements, Service Key represented and promised, among other things, that the services ordered
5 from Oracle under those agreements would be used solely by Service Key for the specific servers
6 identified therein.

7 115. At the time Service Key made these representations and promises to
8 Oracle, Service Key intentionally failed to disclose that it planned to use the services it ordered
9 from Oracle (including access to MOS) as part of its business to sell or otherwise make available
10 its MOS access credentials to third parties, such as DLT-FBS, for use in supporting customers of
11 those third parties that do not otherwise have the right to access or use Oracle's support products
12 and services. Oracle, at the time Service Key made these promises and took the actions alleged,
13 reasonably relied on Service Key's deception, was ignorant of Service Key's secret intention to
14 make its MOS access credentials available to third parties, and could not, in the exercise of
15 reasonable diligence, have discovered Service Key's secret intention.

16 116. As a proximate result of Service Key's fraudulent conduct, Oracle was
17 damaged by, among other things the unauthorized use of MOS and its software by parties who
18 had not paid Oracle for it, in an amount to be proven at trial.

19 117. Service Key fraudulently told its customers in its marketing materials that
20 "Service Key is the vehicle to assist you in getting the [Sun Solaris] patches, minor updates, and
21 releases." Ex. I at 2. That same document, entitled the Sun Alternative Maintenance Guide,
22 falsely told customers they were "entitled to these deliverables based on the end-user original
23 license agreement." *Id.* at 4. Service Key knew this was false, as evidenced by the fact that it
24 renewed its own support agreement with Oracle (which has now been terminated) precisely
25 because it was not entitled to ongoing support materials from Oracle simply by virtue of its
26 original license agreement.

27 118. On July 23 and November 6, 2011, a user with an IP address owned by
28 third-party Ball Corporation accessed Oracle's protected support websites using credentials

1 registered to Service Key and downloaded Oracle's copyrighted software. Oracle never
2 authorized Service Key or anyone else to provide Ball Corporation with these access credentials.

3 119. On July 14, and November 10 and 15, 2011, a user with an IP address
4 owned by third-party Department of Defense accessed Oracle's protected support websites using
5 credentials registered to Service Key and downloaded Oracle's copyrighted software. Oracle
6 never authorized Service Key or anyone else to provide the Department of Defense with these
7 access credentials.

8 120. On September 8, October 21, and December 1, 2011, users with IP
9 addresses owned by unknown third-parties accessed Oracle's protected support websites using
10 credentials registered to Service Key and downloaded Oracle's copyrighted software. Oracle
11 never authorized Service Key or anyone else to provide the third parties with these access
12 credentials.

13 121. Unlicensed entities unrelated to Service Key used Service Key's access
14 credentials to download over 200 items of Oracle software on September 7, 2011; more than 200
15 additional items the following day; and over 800 more on October 4, 2011. Oracle never
16 authorized Service Key or anyone else to provide the entities with these access credentials.
17 Oracle believes discovery will reveal additional instances of this conduct.

18 122. As a result of Service Key's and DLT-FBS's actions, Oracle has suffered
19 damage and loss in an amount to be proven at trial, but aggregating at least \$5,000 in value
20 during a one-year period, including, without limitation the cost of investigating, conducting an
21 damage assessment, and responding to Service Key's and DLT-FBS's actions.

22 123. Service Key's and DLT-FBS's unlawful access to and theft from Oracle's
23 computers have caused Oracle irreparable injury. Unless restrained and enjoined, Service Key
24 and DLT-FBS will continue to commit such acts. Oracle's remedies at law are not adequate to
25 compensate them for these afflicted and threatened injuries, entitling Oracle to remedies
26 including injunctive relief as provided by 18 U.S.C. § 1030(g).

Third Claim for Relief

False Advertising Under the Lanham Act. 15 U.S.C. § 1125(a)(1)(B)

(By Oracle Against all Defendants)

124. Oracle incorporates each of the allegations in the preceding paragraphs of this Complaint as though fully set forth here, including without limitation Paragraphs 1-123.

125. Defendants have engaged in unlawful false, misleading, deceptive, and confusing advertising and promotion in interstate commerce in connection with their computer support products or services as alleged above in an effort to gain unfair competitive advantage over Oracle.

126. DLT-FBS falsely represented to potential and/or actual customers that it was able to provide “premier support” for Sun computers, falsely implying that the support it would provide was the equivalent to Oracle Premier Support.

127. DLT-FBS falsely represented to potential and/or actual customers that DLT-FBS was authorized and able to provide Oracle “firmware and patches,” “product documentation,” and “access to all Sun/Oracle software updates, patch releases, micro code upgrades, etc” for those customers’ Sun computers; and that those customers could lawfully obtain these materials through DLT-FBS even if those customers cancelled their support contracts with Oracle.

128. Service Key and Vines falsely advertised and represented to customers and potential customers that Service Key could provide legal copies of software patches and updates for their Oracle computer products if those customers or potential customers cancelled their support contracts with Oracle.

129. Service Key and Vines also falsely stated to customers and/or potential customers that Service Key had made a deal with Sun and/or Oracle that would allow Service Key to provide software maintenance support related to Solaris.

130. Defendants’ statements were false and misleading representations of fact in commercial advertising and promotion that misrepresented the nature and qualities of both Defendants’ products and services, and also those of Oracle.

131. Defendants' false, misleading, deceptive, and confusing advertising and promotion of their services has caused, influenced, and induced customers to purchase support services from DLT-FBS and/or Service Key rather Oracle's support services. Defendants' conduct has thus influenced, and is likely to influence, the purchasing decisions of customers who purchase support services that include full access to software patches and upgrades and Oracle's Premier Support for Oracle/Sun computers.

132. Defendants have injured Oracle, and will likely injure it in the future, with this false, misleading, deceptive, and confusing promoting and advertising by diverting support services revenue for Oracle/Sun computers from Oracle to DLT-FBS and Service Key.

133. Defendants' false, misleading, deceptive, and confusing promoting and advertising has been deliberate and willful. Among other things, DLT-FBS has continued to represent to its customers that they may receive Oracle software and patch releases through DLT-FBS after Oracle repeatedly warned DLT-FBS in writing that DLT-FBS's promoting and advertising of its support services was false and misleading, and was causing actual injury to Oracle. Service Key and Vines falsely represented to Service Key's customers and potential customers that Service Key had a deal with Oracle/Sun that allows Service Key to provide software maintenance for Solaris specifically to induce those customers to purchase support from Service Key instead of from Oracle.

134. By reason of this false, misleading, deceptive, and confusing promoting and advertising by Defendants, Oracle has also suffered irreparable injury, and will continue to suffer irreparable injury, for which Oracle has no adequate remedy at law, entitling Oracle to injunctive relief.

Fourth Claim for Relief

Breach of Contract

(By Oracle Against Service Key and DLT-FBS)

135. Oracle incorporates each of the allegations in preceding paragraphs 2-4, 6, 8-41, 51-81 of this Complaint as though fully set forth here.

1 136. Service Key and DLT-FBS agreed to be bound by the terms of use on
2 Oracle's support websites, including the Oracle.com Terms of Use, and the MOS Terms of Use,
3 when they created accounts on the MOS website, and when they accessed or download software
4 from the MOS website.

5 137. DLT-FBS further agreed to be bound by the terms of the OPN Agreement
6 and the FUDA.

7 138. Service Key further agreed to be bound to the service renewal agreements
8 it entered into with Oracle.

9 139. Oracle has performed all conditions, covenants, and promises required on
10 its part to be performed in accordance with the Oracle.com Terms of Use, and My Oracle
11 Support Terms of Use; the OPN Agreement and the FUDA it entered into with DLT-FBS; and
12 the renewal service agreements it entered into with Service Key.

13 140. Service Key and DLT-FBS have breached Oracle's customer support
14 websites' terms of use, including the Oracle.com Terms of Use, and the MOS Terms of Use,
15 including the provisions cited in paragraphs 27-35 above, by among other things:

- 16 • Inducing unauthorized third parties to access the content available through MOS,
17 including software;
- 18 • Using Oracle's software other than in support of Service Key's or DLT-FBS's use
19 of the Oracle hardware for which Service Key or DLT-FBS holds a current
20 support contract from Oracle;
- 21 • Sharing passwords, account information, or other access to MOS with third
22 parties who were not authorized to access MOS and/or software available on
23 MOS, and without disclosing to the third parties that Defendants had no right to
24 provide that access;
- 25 • Sharing software from MOS with unauthorized third parties, and/or using
26 software from MOS to provide services for or to unauthorized third parties, and
27 not disclosing to the third parties that Defendants had no right to provide that
28 software or those services.

141. DLT-FBS has breached the OPN Agreement, including the provisions cited in paragraph 38 above, by among other things:

- Using Oracle's software for purposes other than as specified in the OPN policies or the OPN Agreement;
- Making Oracle's software available to unauthorized third parties, and not disclosing to those third parties that DLT-FBS had no right to distribute Oracle's software.

142. Service Key has breached the renewal service agreements it entered into with Oracle and the incorporated terms of Oracle's technical support policies, including the provisions cited in paragraphs 58–63 above, by among other things:

- Permitting and enabling Oracle support services to be used by entities other than Service Key;
- Downloading or receiving, or assisting others to download and receive, Oracle's Solaris operating system, updates, maintenance releases, and/or patches, for hardware systems other than those specific Service Key computers listed in the service renewal agreements;
- Permitting and enabling individuals other than Service Key's own specifically designated technical contact people to access MOS.

143. As a result of Defendants' breach of the Oracle.com Terms of Use, the MOS Terms of Use, the OPN Agreement, and the renewal service agreements, Defendants have caused damage to Oracle in an amount to be proven at trial. Oracle has also suffered irreparable injury, and will continue to suffer irreparable injury, for which Oracle has no adequate remedy at law, entitling Oracle to injunctive relief.

Fifth Claim for Relief

Inducing Breach of Contract

(By Oracle Against All Defendants)

144. Oracle incorporates each of the allegations in preceding paragraphs 2-4, 6, 8-41, 51-81 of this Complaint as though fully set forth here.

1 145. Service Key, DLT-FBS, and other Oracle customers and third parties
 2 agreed to be bound by the Oracle.com Terms of Use, and the MOS Terms of Use, when they
 3 accessed or download software from the MOS website. The Oracle.com Terms of Use and the
 4 MOS Terms of Use are valid contracts between Oracle and those who access the MOS website.
 5 Defendants had knowledge of the existence of these contracts at all relevant times.

6 146. Oracle has performed all conditions, covenants, and promises required on
 7 its part to be performed in accordance with the Oracle.com Terms of Use and the MOS Terms of
 8 Use.

9 147. Defendants induced other Oracle customers and third parties, to breach
 10 these contracts by engaging in the independently wrongful acts alleged here, including violations
 11 of state and federal laws such as the Computer Fraud and Abuse Act and the Lanham Act.

12 148. On information and belief, and subject to further discovery to identify
 13 additional customers, DLT-FBS induced the US Navy (including sub-entities the Space and
 14 Naval Warfare Systems Command Systems Center in Atlantic Charleston, the Space and Naval
 15 Warfare Systems Command Systems Center in Atlantic New Orleans, the Naval Education and
 16 Training Professional Development and Technology Center, and the Naval Criminal
 17 Investigative Service), the Department of Health and Human Services and the Food and Drug
 18 Administration, the Army (including sub-entities the Mission and Installation Contracting
 19 Command at Fort Eustis, the Army Reserve Contracting Center-East and Army Fort Sam
 20 Houston) to breach the Oracle.com Terms of Use by providing them with unauthorized
 21 credentials and enabling and encouraging them to access the MOS website in violation of the
 22 Oracle.com Terms of Use including the following provisions, to which those customers and third
 23 parties agreed:

24 **You agree not to attempt to gain unauthorized access to any parts**
 25 **of the Site or any Oracle accounts, computer systems or**
 26 **networks.**

27 [...]

28 **Access to and use of password protected or secure areas of the**
 Site is restricted to authorized users only. *You agree not to share*
 your password(s), account information, or access to the Site. You
 are responsible for maintaining the confidentiality of password(s)

1 and account information, and you are responsible for all activities
2 that occur under your password(s) or account(s) or as a result of
3 your access to the Site. You agree to notify Oracle immediately of
4 any unauthorized use of your password(s) or account(s).

5 (emphasis supplied).

6 149. DLT-FBS also induced these same customers to breach the MOS Terms of
7 Use by providing them with unauthorized credentials and enabling and encouraging them to
8 access the MOS website in violation of the MOS Terms of Use including the following
9 provisions, to which those customers and third parties agreed:

10 *You agree that access to My Oracle Support, including access to*
11 *the service request function, will be granted only to your*
12 *designated Oracle technical support contacts and that the*
13 ***Materials may be used only in support of your authorized use of***
14 ***the Oracle programs and/or hardware for which you hold a***
15 ***current support contract from Oracle.** Unless specifically*
16 *provided in your agreement with Oracle, the Materials may not be*
17 *used to provide services for or to third parties and may not be*
18 *shared with or accessed by third parties. However, the Materials*
19 *may be shared with or accessed by third parties who are your*
20 *agents or contractors acting on your behalf solely for your internal*
21 *business operations and you are responsible for their Compliance*
22 *with these My Oracle Support Terms of Use. You agree that you*
23 *will not access or use My Oracle Support in any manner that could*
24 *damage, disable, overburden, impair, or otherwise result in*
25 *unauthorized access to or interference with, the proper functioning*
26 *of any Oracle accounts, systems, or networks.*

27 [...]

28 ***[T]he information contained in the [My Oracle Support]***
 Materials is the confidential proprietary information of Oracle.
 You may not use, disclose, reproduce, transmit, or otherwise copy
 in any form or by any means the information contained in the
 Materials for any purpose, other than to support your authorized
 use of the Oracle programs and/or hardware for which you hold
 a current support contract from Oracle, without the prior written
 permission of Oracle.

 (emphasis supplied).

 150. DLT-FBS knowingly and falsely told its customers that it had
authorization to provide them with access to Oracle's copyrighted materials and support
websites. On September 1, 2011, Cheryl Bruza, an employee of SPAWAR (a division of the
U.S. Navy) asked DLT-FBS "Do you have an authorization letter from Oracle to be an Oracle

1 Premier Support provider/reseller? Please provide the authorization given to your company from
 2 Oracle.” Ex. H at 3. In response DLT-FBS’s Michael Johnson attached a copy of the OPN
 3 agreement and falsely stated: “Our partner level provides us with access to all Sun/Oracle
 4 software updates, patch releases, micro code upgrades, etc. for the current versions of the
 5 software on all of the equipment under the subject contract.” *Id.* at 2.

6 151. Service Key induced its customers to breach those same provisions of the
 7 Oracle.com and MOS Terms Of Use by providing them with unauthorized credentials and
 8 enabling and encouraging them to access the MOS website in violation of the Oracle.com and
 9 MOS Terms Of Use. In its marketing materials entitled the Sun Alternative Maintenance Guide,
 10 Service Key falsely stated that it was “entitled to [Oracle’s software] based on the end-user
 11 original license agreement.” Ex. I at 4. Service Key knew this was false, as evidenced by the fact
 12 that it renewed its own support agreement with Oracle (which has now been terminated)
 13 precisely because it was not entitled to ongoing support materials from Oracle simply by virtue
 14 of its original license agreement. Preliminary discovery indicates that ServiceKey’s false
 15 representations succeeded in luring several customers away from Oracle support in the apparent
 16 false belief that Service Key could provide Solaris updates legally to these customers.
 17 Accordingly, on information and belief, and subject to further discovery to identify additional
 18 customers, the customers whose contracts with Oracle Service Key induced to breach include:
 19 SITA; Federal Home Bank of Atlanta; University of Utah Hospital; TelCel; Cablevision -
 20 Production; Bulletin; Antelope Valley; Weldon William & Lick; Yodlee, Inc. - Canvas; Cooke
 21 Communications NC; Lackland AFB; Lubbock Avalanche Journal; USGS; Savannah Morning
 22 News; ION Media Networks; Investment Company Institute; 1013 Communications LLC (East
 23 Valley Tribune); Topeka Capital - Journal; Athens Banner - Herald; Amarillo Globe-News;
 24 Arkansas Democrat Gazette; Phoenix Color; Florida Times-Union; Waco Tribune Herald;
 25 AARP; Meredith; Autoliv ASP Inc.; CompuCredit; Phototype; Malone Advertising; Florida
 26 Today Newspaper; Adtran, Inc.; Ball Aerospace; Mundocom USA; Ladish Co.; Maximus, Inc.;
 27 Alloy Education; Image Dynamics; PEEQ; Allen Press, Inc.; and ColorEdge Visual.

1 152. These wrongful acts caused the other Oracle customers and third parties to
 2 be in breach of the Oracle.com Terms of Use and the MOS Terms of Use. Defendants acted with
 3 the desire to interfere with these contracts in order to obtain an unfair competitive advantage
 4 over Oracle and/or with the knowledge that such interference was certain or substantially certain
 5 to occur as a result of the acts.

6 153. As a result of Defendants' inducing other Oracle customers and third
 7 parties to breach the Oracle.com Terms of Use and the MOS Terms of Use, Defendants have
 8 caused damage to Oracle in an amount to be proven at trial. The other Oracle customers and third
 9 parties would have otherwise performed on the contracts were it not for Defendants' acts
 10 inducing the other Oracle customers and third parties to breach them.

11 154. Defendants acted with oppression and malice in inducing other Oracle
 12 customers and third parties to breach the Oracle.com Terms of Use, and the MOS Terms of Use,
 13 and Oracle is therefore entitled to an award of punitive damages to punish Defendants' wrongful
 14 conduct and deter future wrongful conduct.

15 **Sixth Claim for Relief**

16 **Fraudulent Inducement**

17 (By Oracle Against Service Key)

18 155. Oracle incorporates each of the allegations in preceding paragraphs 2-4, 6,
 19 8-41, 51-81 of this Complaint as though fully set forth here.

20 156. On May 16, 2011, December 8, 2011, and January 26, 2012, Service Key
 21 renewed technical support service agreements with Oracle that covered certain specific
 22 Oracle/Sun hardware servers that Service Key owns. When it entered into these renewal
 23 agreements, Service Key represented and promised, among other things, that the services ordered
 24 from Oracle under those agreements would be used solely by Service Key for the specific servers
 25 identified therein.

26 157. At the time Service Key made these representations and promises to
 27 Oracle, Service Key intentionally failed to disclose that it planned to use the services it ordered
 28 from Oracle (including access to MOS) as part of its business to sell or otherwise make available

its MOS access credentials to third parties, such as DLT-FBS, for use in supporting customers of those third parties that do not otherwise have the right to access or use Oracle's support products and services.

158. Service Key intended to deceive Oracle by concealing its secret plans, and to induce Oracle to provide Service Key with access to MOS and/or to continue allowing Service Key to access MOS, and the Oracle software available on that website.

159. Oracle, at the time Service Key made these promises and took the actions alleged, reasonably relied on Service Key's deception, was ignorant of Service Key's secret intention to make its MOS access credentials available to third parties, and could not, in the exercise of reasonable diligence, have discovered Service Key's secret intention.

160. In reliance on Service Key's promises, Oracle provided Service Key with access to MOS and/or continued allowing Service Key to access MOS. If Oracle had known of Service Key's actual intention, Oracle would not have allowed Service Key to access MOS.

161. As a proximate result of Service Key's fraudulent conduct, Oracle was damaged by, among other things the unauthorized use of MOS and its software by parties who had not paid Oracle for it, in an amount to be proven at trial.

162. Service Key acted with oppression and malice in concealing material facts known to Service Key with the intention on the part of Service Key of inducing Oracle to act and thereby depriving Oracle of property or legal rights or otherwise causing injury. Oracle is therefore entitled to an award of punitive damages to punish Service Key's wrongful conduct and deter future wrongful conduct.

Seventh Claim for Relief

Fraudulent Inducement

(By Oracle Against DLT-FBS)

163. Oracle incorporates each of the allegations in preceding paragraphs 2-4, 6, 8-41, 51-81 of this Complaint as though fully set forth here.

164. On February 15, 2011, DLT-FBS entered into the OPN Agreement in order to join the OPN, and to obtain access to MOS. When entering into this agreement, DLT-

1 FBS represented and promised, among other things, that it would not “use or duplicate the
2 Oracle property provided to [it] for any purpose other than as specified in the OPN policies or in
3 [the OPN Agreement],” and that it would not “make the Oracle property available to
4 unauthorized third parties.”

5 165. At the time DLT-FBS made these representations and promises to Oracle,
6 DLT-FBS intentionally failed to disclose that it planned to use its access to MOS and Oracle’s
7 software to provide support to its customers by making available access credentials for Oracle’s
8 websites and materials downloaded from Oracle’s websites to customers who did not have
9 authorization from Oracle to access MOS or download Oracle software.

10 166. DLT-FBS intended to deceive Oracle by concealing its secret plans, and to
11 induce Oracle to allow DLT-FBS to join the OPN, and to provide DLT-FBS with access to MOS
12 and/or to continue allowing DLT-FBS to access MOS, and the Oracle software available on that
13 website.

14 167. Oracle, at the time DLT-FBS made these promises and took the actions
15 alleged, reasonably relied on DLT-FBS’s deception, was ignorant of DLT-FBS’s secret intention
16 to provide DLT-FBS’s customers with access credentials to Oracle’s websites and/or proprietary
17 software downloaded from Oracle’s websites, and could not, in the exercise of reasonable
18 diligence, have discovered DLT-FBS’s secret intention.

19 168. In reliance on DLT-FBS’s promises, Oracle permitted DLT-FBS to join
20 the OPN and provided DLT-FBS with access to MOS and/or continued allowing DLT-FBS to
21 access MOS. If Oracle had known of DLT-FBS’s actual intention, Oracle would not have
22 allowed DLT-FBS to join the OPN or to access MOS.

23 169. As a proximate result of DLT-FBS’s fraudulent conduct, Oracle was
24 damaged by, among other things the unauthorized use of MOS and its software by parties who
25 had not paid Oracle for it, in an amount to be proven at trial.

26 170. DLT-FBS acted with oppression and malice in concealing material facts
27 known to DLT-FBS with the intention on the part of DLT-FBS of inducing Oracle to act and
28 thereby depriving Oracle of property or legal rights or otherwise causing injury, and Oracle is

therefore entitled to an award of punitive damages to punish DLT-FBS's wrongful conduct and deter future wrongful conduct.

Eighth Claim for Relief

Unfair Competition—Cal. Bus. & Prof. Code § 17200

(By Oracle Against All Defendants)

171. Oracle incorporates each of the allegations in preceding paragraphs 2-4, 6, 8-41, 51-81, 100-123, 125-170 of this Complaint as though fully set forth here.

172. Defendants have engaged in unlawful business acts or practices, including fraud, computer fraud, breach of contract, and other illegal acts and practices as alleged above, all in an effort to gain unfair competitive advantage over Oracle.

173. These unlawful business acts or practices were committed pursuant to business activity related to providing maintenance and support services for Oracle's computer hardware and software.

174. The acts and conduct of Defendants constitute unlawful and unfair competition as defined by California Bus. & Prof. Code §§ 17200, *et seq.*

175. Defendants' conduct constitutes violations of numerous state and federal statutes and codes, including, but not limited to, violation of the Computer Fraud and Abuse Act, 18 U.S.C. §§ 1030 *et seq.*, and the Lanham Act, 15 U.S.C. § 1125(a)(1)(B). Defendants' conduct also constitutes fraud.

176. Defendants devised their schemes involving false advertising and access credential trafficking for the purposes of inducing owners of Oracle/Sun computer hardware not to enter into support agreements with Oracle, but rather to enter into profitable support contracts with DLT-FBS, Service Key, or other parties affiliated with Service Key. Defendants executed this scheme by means of false pretenses, representations, or promises including by providing passwords or other credentials to access to Oracle's support websites to others without authorization, and intentionally accessing Oracle's computer systems without authorization and/or in excess of authorized access, thereby obtaining information from Oracle's computer systems, in violation of 18 U.S.C. § 1030.

177. As described above, Oracle has lost money and property and suffered injury in fact as a result of Defendants' unlawful business acts and practices.

178. Defendants have improperly and unlawfully taken commercial advantage of Oracle's investments in its computers, support delivery infrastructure, and customer relationships. In light of Defendants' conduct, it would be inequitable to allow Defendants to retain the benefit of the funds obtained through the unauthorized and unlawful use of that property.

179. Defendants' unfair business practices have unjustly minimized Oracle's competitive advantages and have caused and are causing it to suffer damages.

180. As a result of such unfair competition, Oracle has also suffered irreparable injury and, unless Defendants are enjoined from such unfair competition, will continue to suffer irreparable injury, whereby Oracle has no adequate remedy at law.

181. Defendants should be compelled to disgorge and/or restore any and all revenues, earnings, profits, compensation, and benefits they may have obtained in violation of Cal. Bus. & Prof. Code §§ 17200 *et seq.*, and should be enjoined from further unlawful and unfair business practices.

Ninth Claim for Relief

Intentional Interference With Prospective Economic Relations

(By Oracle Against all Defendants)

182. Oracle incorporates each of the allegations in preceding paragraphs 2-4, 6, 8-41, 51-81, 100-123, 125-181 of this Complaint as though fully set forth here.

183. Oracle was in an economic relationship with customers, including sub-entities of the U.S. Navy and the U.S. Food and Drug Administration (the "FDA"), that probably would have resulted in an economic benefit to Oracle. Namely, these customers owned Oracle/Sun computer hardware, were customers of support services from Oracle for that hardware, and would typically be expected to renew their support services agreements with Oracle.

184. Defendants knew of these economic relationships between Oracle and its customers, and intended to disrupt them. For example, DLT-FBS knew that the U.S. Naval Agencies and the FDA were customers of Oracle's support services.

185. DLT-FBS and Service Key engaged in wrongful conduct by, among other things, fraudulently inducing Oracle into contractual arrangements, violating the Computer Fraud and Abuse Act, and breaching their contracts with Oracle. DLT-FBS, Service Key, and Vines engaged in wrongful conduct by, among other things, violating the Lanham act and misrepresenting their association with Oracle, their ability to provide support services that were equivalent to Oracle's, and their ability to provide access to Oracle's support website and proprietary software.

186. Oracle's relationship with these customers, including the U.S. Naval Agency and the FDA, was disrupted when these customers decided not to renew support agreements with Oracle, and instead entered into support agreements with DLT-FBS, Service Key, and/or affiliates of Service Key.

187. Oracle was damaged as a result of the disruption of these relationships in an amount to be proven at trial.

188. Defendants' wrongful conduct was a substantial factor in causing this harm to Oracle.

Tenth Claim for Relief

An Accounting

(By Oracle Against all Defendants)

189. Oracle incorporates each of the allegations in preceding paragraphs 2-4, 6, 8-41, 51-81, 100-123, 125-189 of this Complaint as though fully set forth here.

190. Oracle has a contractual relationship with each Defendant.

191. DLT-FBS is a member of the Oracle Partner Network. Pursuant to its OPN Agreement, DLT-FBS agreed that:

Oracle may audit your use of the Oracle property. Any such audit shall not unreasonably interfere with your normal business operations. You agree to cooperate with Oracle's audit and

1 *provide reasonable assistance and access to information including*
 2 *but not limited to relevant books, records, agreements, servers,*
 3 *technical personnel, and order reporting systems.*

4 192. DLT-FBS also executed Oracle's Full Use Distribution Agreement, which
 5 provides in part that:

6 *Oracle may audit your distribution of the programs, hardware,*
 7 *learning credits and services and your activities under this*
 8 *agreement. Any such audit shall not unreasonably interfere with*
 9 *your normal business operations. You agree to cooperate with*
 10 *Oracle's audit and provide reasonable assistance and access to*
 11 *information including but not limited to relevant books, records,*
 12 *agreements, servers, technical personnel, and order reporting*
 13 *systems.*

14 193. Service Key signed an Oracle End User Purchasing Agreement. Pursuant
 15 to that agreement, Service Key agreed:

16 *to permit Sun, or Sun's independent audit firm, to access and audit*
 17 *Company systems, facilities and records (no more than one (1)*
 18 *time per year unless Sun has evidence indicating [Service Key] is*
 19 *in breach of this Agreement) to the extent necessary to determine*
 20 *Company's compliance with Sun's license grants."*

21 194. Defendants have obtained business and funds through the use of unlawful
 22 conduct including, but not limited to:

- 23 (a) Breaching the agreements governing access to or use of MOS;
- 24 (b) Improperly, willfully, and unlawfully taking commercial advantage
 25 of Oracle's investment in its software and support materials, for the purpose of undercutting and
 26 unfairly competing with Oracle's ability to do business and compete in the market;
- 27 (c) Fraudulently accessing, and illegally providing others with access
 28 to, the MOS website and the software and support materials available on that website, without
 authorization or consent, or in excess of authorization or consent, in furtherance of their unlawful
 and deceptive scheme as described above; and
- (d) Violating the Lanham Act, and misrepresenting their association
 with Oracle, their ability to provide support services that were equivalent to Oracle's, and their
 ability to provide access to Oracle's support website and proprietary software.

196. The amount of money due from Defendants to Oracle is unknown to Oracle, and cannot be ascertained without an accounting of the income and gross profits Defendants have obtained through the wrongful and unlawful conduct. Oracle is entitled, therefore, to a full accounting.

8 WHEREFORE, Oracle respectfully prays for the following:

(1) Copying, distributing, using, or creating derivative works from Oracle's software or support materials in any way, including for any business purpose, except as allowed by express license from Oracle;

(3) Facilitating the access to, use of, or downloading from any Oracle support website for, or on behalf of, any customer or party other than by using that specific customer's or party's valid login credentials;

28 (5) Providing passwords or other access credentials for Oracle's

Case No. 4:12-cv-00790-SBA

support websites to any other parties who are not authorized to use those passwords or access credentials;

(6) Certifying, promoting, advertising, or representing that they are able to provide support for Sun computers that is the equivalent of Oracle Premier Support, or that they are able to provide customers with access to any Oracle software, including firmware, upgrades, and patches; and

(7) Otherwise engaging in acts of unfair competition, unfair practices, copyright infringement, or computer fraud against Oracle;

B. That the Court order Defendants to file with the Court and serve on Oracle within 30 days after the service on Defendants of such injunction a report in writing, under oath, setting forth in detail the manner and form in which Defendants have complied with the injunction;

C. For an Order directing Defendants to return Oracle's property, including, without limitation, Oracle's confidential, proprietary, and copyrighted Software and Support Materials, that Defendants took from Oracle, as set forth in this Complaint;

D. For an Order impounding or destroying and all infringing materials pursuant to 17 U.S.C. § 503;

E. For an Order awarding Oracle punitive damages in a sum to be determined at trial;

F. For restitution and disgorgement of all ill-gotten gains unjustly obtained and retained by Defendants through the acts complained of here;

G. For an Order finding a constructive trust for Oracle's benefit, consisting of all revenues received by Defendants from the wrongful conduct which should rightfully have been received by Oracle and all profits derived from that wrongful conduct, and directing Defendants to pay all such sums to Oracle;

H. For damages to be proven at trial;

I. For those damages to be trebled;

J. For statutory damages pursuant to 17 U.S.C. § 504;

1 K. For prejudgment interest;

2 L. For an accounting;

3 M. For an Order awarding Oracle its attorneys' fees and costs; and

4 N. For an Order awarding Oracle such other and further relief as the Court

5 deems just and proper.

6
7 DATED: December 17, 2012

8 Bingham McCutchen LLP

9
10
11 By: /s/ Geoffrey M. Howard

12 Geoffrey M. Howard
13 Attorneys for Plaintiff
14 Oracle America, Inc.
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DEMAND FOR JURY TRIAL

In accordance with Fed. R. Civ. P. 38(b), Plaintiff Oracle America, Inc. demands
a trial by jury on all issues triable by a jury.

DATED: December 17, 2012

Bingham McCutchen LLP

By: /s/ Geoffrey M. Howard
Geoffrey M. Howard
Attorneys for Plaintiff
Oracle America, Inc.

PROOF OF SERVICE

I am over eighteen years of age, not a party in this action, and employed in San Francisco County, California at 3 Embarcadero Center, San Francisco, California 94111. I am readily familiar with the practice of this office for collection and processing of correspondence for mail/fax/hand delivery/next business day Federal Express delivery, and they are deposited that same day in the ordinary course of business.

On December 17, 2012, I served the attached:

**SECOND AMENDED COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF FOR:**

- (1) COPYRIGHT INFRINGEMENT;**
- (2) VIOLATIONS OF THE COMPUTER FRAUD AND
ABUSE ACT;**
- (3) FALSE ADVERTISING IN VIOLATION OF THE
LANHAM ACT SECTION 43(A);**
- (4) BREACH OF CONTRACT;**
- (5) INDUCING BREACH OF CONTRACT;**
- (6) FRAUDULENT INDUCEMENT (AGAINST SERVICE
KEY);**
- (7) FRAUDULENT INDUCEMENT (AGAINST DLT-FBS)**
- (8) UNFAIR COMPETITION;**
- (9) INTENTIONAL INTERFERENCE WITH
PROSPECTIVE ECONOMIC RELATIONS ; AND**
- (10) AN ACCOUNTING**

☐

(BY FAX) by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

☐

(BY MAIL) by causing a true and correct copy of the above to be placed in the United States Mail at Palo Alto, California in sealed envelope(s) with postage prepaid, addressed as set forth below. I am readily familiar with this law firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence is deposited with the United States Postal Service the same day it is left for collection and processing in the ordinary course of business.

☒

(VIA EMAIL) by transmitting a true and correct copy via email the document(s) listed above on this date to the person(s) at the email address(es) set forth below.

1 ☐ (PERSONAL SERVICE) by causing a true and correct copy of the above
2 documents to be hand delivered in sealed envelope(s) with all fees fully paid to the
3 person(s) at the address(es) set forth below.

4 ☐ (ELECTRONICALLY) by transmitting through the Court's ECF system.

5
6 **VIA FEDERAL EXPRESS**

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*Counsel for DLT Federal Business
Systems Corporation*

15
16 I declare that I am employed in the office of a member of the bar of this court at
17 whose direction the service was made and that this declaration was executed on December 17,
18 2012, at San Francisco, California.

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Kyle Zipes